No. 86-1209

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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In the

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR Petitioner,

against

THE STATE OF NEW YORK, HON.ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, NEW YORK STATE SUPREME COURT

REPLY BRIEF

PETITION FOR A WRIT OF CERTIORARI

SAM POLUR, Esq.
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REPLY BRIEF

The Memorandum Opposing Certiorari, duly submitted herein by the Attorney General of the State of New York, an Assistant Attorney General, the Solicitor General of the State of New York and the Deputy Solicitor General, fails to disclose submission to the Court of a second Error Coram Nobis, with affirmation dated December 1, 1986 and motion dated December 15, 1986. That, as virtually all prior pleadings of your petitioner was served upon the Attorney General, the District Attorney of New York County, Justice Alvin F. Klein. The motion to vacate judgment pursuant to Criminal Procedure Law ("CPL") Section 440.10 (1)(a)(g)(h) stressed lack of jurisdiction by the court of the action(and)of the person of the (defendant) (CPL §440.10(1a)); newly discovered evidence (CPL §440.10(1g)); that the judgment was obtained in violation of a right of the defendant under the constitution of the state and of the United States (CPL §440.10 (1h)).

There could be no subject matter juris-

diction absent initiation of a criminal contempt proceeding by way of an independent special proceeding pursuant to Article Four of the Civil Practice Law and Rules ("CPLR") of the State of New York. In personam jurisdiction never attached in that Sam Polur was never named a party to any action or proceeding; he merely argued a motion before Justice Klein opposing the seeking of an Order to find George Sassower, Esq., Sam Polur, Esq. and Hyman Raffe, their client, in criminal contempt. In lieu of setting the case down for a "hearing" under oath, the Court without an accusatory instrument, without any testimony whatsoever, without a scintilla of evidence or proof, without confrontation, without the opportunity to be heard under oath and subject to cross-examination, merely ex parte issued an order "finding" criminal contempt (sic), sentenced Sam Polur to thirty-day incarceration, saw him arrested and serve the full sentence imposed in the Bronx Mens House of Detention.

In his affirmation in support of the motion for Error Coram Nobis relief, petitioner stated in paragraph "B", page 3 of the exhibit herein, A-6: "B. I seek the relief herein based on newly discovered evidence of a most substantive nature." (emphasis added) That newly-discovered evidence was a communication of Attorney George Sassower dated October 22, 1986 with copies remitted to Mr. Justice Alvin F. Klein and to David S. Cook, Esq., Senior Assistant Attorney General of the State of New York, who had received on behalf of that Office, all the pleadings in the case affecting Sam Polur,Esq., himself and Mr. Hyman Raffe. Nowhere in the record is there a single denial of the facts therein stated. It is clear and persuasive that Sassower - Mr. Raffe's Attorney for some twenty (20) years, the sole legal Counsel to Mr. Raffe for some five (5) years before I was retained or even heard of the case which created the public blackening of my impeccable good name - provided not only Feltman, Karesh

Major & Farbman, Esqs. (formerly Feltman, Karesh & Major, Esqs.), as opposing Counsel, with all the pleadings, but the Office of the Attorney General of the State of New York, through David S. Cook, Senior Assistant Attorney General, was served with all the pleadings, appeared at virtually every hearing hereinbelow. Therefore, the disingenuous statement that solely, the "only party with full knowledge of the relevant facts and complete files" (sic!) are the private attorneys above cited - found in page "2" of the Memorandum Opposing Certiorari herein - palters with truth and reality. The Attorney General of the State of New York, while not a "party", was served with everything submitted to the Courts, purposefully and continuously.

The Memorandum Opposing Certiorari, instructively, contains strange lapses, incongruities and misstatements. Footnote "3" on page 9 accuses petitioner of omitting the June 23, 1986 order denying coram nobis relief. The truth is: It was merely omitted from the

Table of Contents. The June 23, 1986 order is found on page A-27 of petitioner's Appendix.

The statement that "This Court will not consider a federal question when it has not been raised, presented,and pursued in a timely and proper manner at the appropriate points in the state court proceedings," is true and known to petitioner. The annexed coram nobis petitions submitted to the New York State Supreme Court refute the inapposite and demonstrably-false, fanciful assertion on page "6" of the Memorandum Opposing Certiorari that "denial of coram nobis relief rested on an independent and adequate state procedural ground." (emphasis added) Even a cursory examination of the submitted petitions bely the bald, undocumented assertions found on pages 6 and 7, supra. The cases cited simply are not applicable to the facts and issues posited herein and hereinbelow. The bald, conclusory statements are nowhere "backed up" or demonstrated to have any validity in law, in equity, in fact or in truth.

The pronounced antipathy to George Sassower's personal and professional attributes "spilled over" to myself when I had vigorously asserted the rights to Due Process and fair play in the Courts with respect to Mr. Raffe. The Second Judicial Department for more than two years past had officially investigated the propriety of Mr. Sassower's actions as an Attorney at Law. Within the past two weeks, upon the findings and recommendations of the Grievance Committee of the Bar Association for the Second Judicial Department, the Appellate Division has Disbarred him from the practice of Law. He had been a practicing Attorney for some 36 years. It is worthy of note that I had been forced to write to many Justices in the First and Second Judicial Departments that I had at no time authorized Mr. Sassower to represent me; that he had repetitively placed my name on pleadings and documents as a party-plaintiff, inter alia, without my knowledge and consent. While I was incarcerated, he petitioned for a Writ

of Habeas Corpus before Justice Kupferman of the First Department Appellate Division of the Supreme Court. I KNEW NOTHING ABOUT SAID ORAL "PETITION", NO RECORD WAS EVER TRANSCRIBED OR CAN BE FOUND OF THE NATURE OR CONTEXT OF THOSE INFORMAL PROCEEDINGS THAT "DENIED" ME HABEAS CORPUS RELIEF! Many months later, I learned of multiple actions "on my behalf" - often with my name as "plaintiff" or "petitioner" - only after the fact. The Supplemental Exhibit herein contains one of my many mailings respecting this underhanded, dirty and opprobrious misuse of my name - unknown to me. The most recent necessity for sending such a letter resulted when Judge Robert J. Ward of the Southern District was kind enough to inform me of my "petition" to his Court together with that of Sassower.

The Attorney General's MEMORANDUM OPPOSING CERTIORARI states on pages 4-5 that "Virtually every issue raised on petitioner's coram nobis motion was determined on the merits (sic!) by the New York courts on his direct appeal." (my emphasis) On the contrary, that never occurred. There were mere affirmances without opinion. Multiple motions and appeals, as indicated, were unknown to me. Sassower had manipulated them to appear as though I was a participant. There were two or three occasions prior to my realization that Sassower

was uncontrollable, treacherous, dishonest - and endeavoring to pillory me by his clutch-embracing of me in order to give himself increasingly-required "credibility."

This Supreme Court will readily observe that there has never been so much as a denial that all I allegedly did was "serve a summons". None of the facts, none of the massive law, statutes, Constitutional principles and case-laws cited were rebutted or challenged.

The Attorney General of the State of New York, the Solicitor General of the State of New York and their respective top assistants in their Memorandum Opposing Certiorari simply ignore the "rightness" of the petitioner's case. They clearly have not read the classic admonition that they "may strike hard blows - but they must be fair blows." The classic language of Greene v. McElroy, 79 S.Ct.1400, 1413-1414 is presciently "on point" herein. These are principles which the State of New York, in this case, has not learned - or refuses to remember:

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the indiviudal so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, Mattox v. United States, 156 U.S. 237, 242-244, 15 S.Ct. 337, 339-340, 39 L.Ed. 409; ... In re Oliver, 333 U.S. 257, 273, 68 S.Ct.993, 999, 44 L.Ed. 1150; ... Nor, as it has been pointed out, has Congress

ignored these fundamental requirements in enacting regulatory legislation."(emphasis added)

5 Wigmore on Evidence (3d ed. 1940) §1367 was quoted, 79 S.Ct., at p.1414:

> "..The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience."

In the case at Bar, regrettably, the luminous language of the Court and the incisive critique of Professor Wigmore have been abjured by the State of New York and her Justices. For shame!

Conclusion

It is respectfully urged the Court grant Certiorari herein, together with all other further and different relief it deems just and appropriate.

March 18, 1987.

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